



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2012-0918]

RIN 1625-AA09

Drawbridge Operation Regulation; Lake Champlain, Swanton, VT

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the drawbridge operation regulation that governs the operation of the New England Central Railroad Bridge across Missisquoi Bay, mile 105.6, at Swanton Vermont, and removing the regulation for the SR78 highway bridge at mile 105.9. The owner of the New England Central Railroad Bridge has requested to operate the bridge from a remote location, at St. Albans, Vermont. It is expected that this change to the regulations will provide relief to the bridge owner from crewing the bridge while continuing to meet the reasonable needs of navigation.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments and related materials received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2012-

0918 and are available online by going to <http://www.regulations.gov>, inserting USCG-2012-0918 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. John W. McDonald, Project Officer, First Coast Guard District Bridge Branch, 617-223-8364, john.w.mcdonald@uscg.mil. If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

A. Regulatory History and Information

On November 9, 2012, we published a notice of proposed rulemaking (NPRM) entitled "Drawbridge Operation Regulation; Lake Champlain, Swanton, VT" in the Federal Register (77 FR 67319). We received no comments on the proposed rule. No public meeting was requested, and none was held.

B. Basis and Purpose

The New England Central Railroad Bridge, formerly the Central Vermont Railway Bridge, at mile 105.6, across

Missisquoi Bay, at Swanton, Vermont, has a vertical clearance in the closed position that ranges between 9.5 feet and zero feet depending on the time of year and other conditions. The waterway users are predominantly seasonal recreational vessels.

The existing drawbridge operation regulations are listed at 33 CFR 117.993(c), which require the draw to operate as follows: from June 15 through September 15, the draw shall open on signal, Monday through Friday between 9 a.m. and 5 p.m. and on Saturday, Sunday, Independence Day, and Labor Day, between 7 a.m. and 11 p.m. At all other times, after at least a two hour notice is given. From September 16 through June 14, on signal after at least a twenty four hour notice is given.

The Coast Guard received a request from the owner of the bridge, New England Central Railroad Inc., to change the drawbridge operation regulations to allow the bridge to be operated remotely from the New England Central Railroad Dispatcher's Office located at St. Albans, Vermont.

The bridge had been operated manually by hand crank since it was constructed in 1912. An operator would be dispatched to the bridge to manually close the draw to facilitate the passage of a train and then crank the draw back into the open position.

The Federal Railroad Administration funded the motorization of the bridge to allow remote operation of the bridge by New England Central Railroad. As a result, in 2012, the operating system was modified by adding electric bridge opening motors to swing the draw open and closed, a standby electric generator to be used in the event of a power outage, local bridge operation controls installed at the tenders building on the bridge to be used to locally operate the draw, LED navigation lights, and electric illuminated signs both up and down stream to warn mariners that the bridge will be closing for the passage of an approaching train.

Presently, rail traffic crosses the bridge seven days a week. There are normally two train passages daily crossing the bridge in the morning and returning later in the same day.

Under this final rule the bridge will be opened and closed remotely, from the New England Central Railroad Dispatchers Office at St. Albans, Vermont.

During the boating season, June 15 through September 15, the bridge will remain in the open position at all times, except for the passage of rail traffic. Once rail traffic crosses the bridge the bridge will be returned to the full open position.

In the off season, September 16 through June 14, the bridge may remain in the closed position at all times.

The bridge will be opened for the passage of vessel traffic September 16 through June 14, upon receipt of a twenty four hour advance notice to open the bridge.

The bridge opens on average two to three times a week during the period 16 September through 14 June when the bridge will open after a twenty four hour advance notice is given.

The waterway is normally frozen December through April each winter when the recreational vessels that normally transit this bridge are in winter storage.

As a result of the above information the Coast Guard believes it is reasonable for the bridge owner to operate the bridge from a remote location and that the reasonable needs of navigation will continue to be addressed.

The SR78 highway bridge has been replaced with a new fixed span highway bridge; therefore, the drawbridge operations for that bridge will be deleted because they are now obsolete and unnecessary.

The New England Central Railroad Bridge is listed in the existing regulations as the Central Vermont Railway Bridge. We are changing the name of the bridge under this rule to update the present name and ownership of the bridge.

C. Discussion of Comments and Changes

The Coast Guard received no comments in response to the notice of proposed rulemaking. As a result, no changes have been made to this final rule.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. This conclusion is based on the fact that the bridge will continue to operate the same, except that, it will be opened and closed from a remote location in St Albans, Vermont.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have

a significant economic impact on a substantial number of small entities.

This rule will have no effect on small entities since this drawbridge will continue to operate the same except that it will be operated from a remote location.

There is no new restriction or regulation being imposed by this rule; therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule, if the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to

comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

6. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will

not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

7. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

8. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

9. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

10. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian

tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

11. Energy Effects

This action is not a "significant energy action" under Executive order 13211, Actions Concerns Regulations That Significantly Affect Energy Supply, Distribution, or Use.

12. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

13. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant

Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule involves operating the bridge from a remote location. This rule is categorically excluded, under figure 2-1, paragraph (32)(e), of the Instruction.

Under figure 2-1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. In § 117.993, revise paragraph (c) and remove paragraph (d).

The revision reads as follows:

§ 117.993 Lake Champlain.

* * * * *

(c) The draw of the New England Central Railroad Bridge across Missiquoi Bay, mile 105.6, at Swanton, Vermont, shall operate as follows:

(1) From June 15 through September 15, the draw shall remain in the full open position at all times and shall only be closed for the passage of rail traffic or the performance of maintenance authorized in accordance with subpart A of this part.

(2) From September 16 through June 14, the draw may remain in the closed position and shall be opened on signal for the passage of vessel traffic after at least a twenty four hour notice is given by calling the number posted at the bridge.

(3) The draw may be operated either remotely by the New England Central Railroad train dispatcher located at St. Albans, Vermont or manually by a draw tender located at the bridge.

(4) A sufficient number of infrared cameras shall be maintained in good working order at all times with a clear unobstructed view of the channel under the bridge, and the up and down stream approaches to the bridge. A signal horn and message boards located both up and down stream, necessary to warn marine traffic that the bridge will be closing, shall also be maintained in good working order at

all times. In the event that any of the cameras, navigation lights, horn, or message board become disabled, personnel shall be deployed to the bridge to be on scene within two hours from the known time of the equipment failure.

(5) The draw may operate remotely as follows: Once it is determined that the draw must be opened or closed, the train dispatcher shall observe the waterway both up and down stream via the infrared cameras to verify that the channel is clear of all approaching vessel traffic. All approaching vessel traffic shall be allowed to pass before the bridge may be closed. Once it is determined that no vessel traffic is approaching the dispatcher shall sound the warning horn and activate the up and down stream message boards indicating that the bridge will be closing. After at least a one minute delay the draw may then be closed and the swing span navigation lights shall display as red to indicate the bridge is in the closed position. Once the train clears the bridge the draw shall be returned to the full open position and the swing span lights shall display as green to indicate the draw is in the full open position.

(6) In the event that the dispatcher cannot verify that the channel is clear of all vessel traffic and the bridge cannot be safely closed, an on-scene train crewmember shall observe the waterway for any vessel traffic and then communicate with the train dispatch office either by radio or telephone

to request the bridge be safely closed. Personnel shall then be deployed to the bridge to arrive within two hours to inspect and repair the bridge remote operation equipment.

(7) The bridge shall be operated manually from the tender's house located at the bridge until all necessary repairs are completed to the remote operation equipment.

Dated: February 20, 2013

Daniel B. Abel
Rear Admiral, U.S. Coast Guard
Commander, First Coast Guard District

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